

Agency 12

Agricultural Labor Relations Board

Articles

12-1. GENERAL PROVISIONS.

12-2. PROCEDURE.

Article 1.—GENERAL PROVISIONS

12-1-1. Definitions. a. Act—The term “act” shall refer to the agricultural labor relations act, K.S.A. 44-818 *et seq.*, and amendments. Terms used in these rules shall have the same meaning as defined in the act unless their context clearly indicates otherwise.

b. Computation of time—Whenever the time limited in these rules for any act is seven days or more, Saturdays, Sundays and legal holidays shall be included in making the computation. Whenever the time so limited is less than seven days, Saturdays, Sundays and legal holidays shall be excluded. Whenever the last day of any such period shall fall on a Saturday, Sunday or legal holiday, such day shall be omitted from the computation. The board, for good cause shown, may extend any time prescribed in these rules. Computation of time shall commence when service to a party is made by the board.

c. Party—The term “party” as used herein shall mean any agricultural employee, employee organization, or agricultural employer filing a complaint, petition, or application under the act or these rules; any agricultural employee, employee organization or agricultural employer named as a party in a complaint or petition filed under the act or these rules; or any person, organization or agricultural employer whose timely motion to intervene in a proceeding has been granted.

d. Board—The term “board” shall mean the agricultural labor relations board established pursuant to K.S.A. 44-820, or such person or persons designated by said board to act in its behalf. (Authorized by K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-1-2. Scope. a. Waiver—In the event that the application of these rules would not be feasible or would work an injustice, the board may waive or suspend the rules at any time or in any

proceeding unless such action results in depriving a party of substantial rights.

b. Separability—If any provisions of these rules be held invalid, it shall not be construed to invalidate any of the other provisions of these rules.

c. Filing annual report—Every employee organization having one hundred or more members shall file with the board a copy of the annual report required pursuant to K.S.A. 44-806.

d. Proof of employee organization Kansas license—Every person who shall act or attempt to act for any employee organization shall show proof of being licensed in Kansas as provided in K.S.A. 44-804 before that person will be allowed to participate in proceedings under the agricultural labor relations act, K.S.A. 44-818 *et seq.* (Authorized by K.S.A. 44-823(g), K.S.A. 1977 Supp. 44-804, 44-806, 44-820(d); effective May 1, 1978.)

Article 2.—PROCEDURE

12-2-1. Service of process and other board documents. a. Method; proof; complaints, orders, and other processes and papers of the board—Complaints, decisions and orders and other processes and papers of the board may be served personally, by certified mail, by telegraph or by leaving a copy thereof in the proper office or place of business of persons to be served. The return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt, when certified and mailed or telegraphed as aforesaid, shall be proof of service of the same.

b. Service by a party—The moving party and the respondent in any action shall be required to file an original and three copies of any pleadings with the board either in person or by certified mail.

c. Service upon attorney—If a party appears by its attorney, all papers other than the complaint,

notice of original hearings, and decisions and orders may be served as hereinafter provided upon such attorney with the same force and effect as though served upon the party.

d. Service by the board—The board shall be required to serve all parties to an action with all papers duly filed with the board. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-2. Hearings. a. General provisions

1. Hearings may be conducted by the board, or any member or members thereof, or any member of its staff or other individual designated by the board. In the event a duly-appointed hearing examiner is unable to continue a hearing, such hearing may be reconvened at a later date, when the appointed examiner is available, or with the consent of all parties a hearing officer may be substituted.

2. The hearing shall be limited to pertinent matters necessary to determine questions relating to the immediate controversy.

b. Notice of hearing

1. Following the filing of a petition, if it appears to the board that further proceedings are warranted, the board or its agent shall issue and serve upon each of the parties and upon any known individuals or employee organizations claiming to represent any employee directly affected, a notice of hearing, at a place fixed therein, and, except by agreement of the parties or in unusual circumstances, at a time not less than seven days after the service of such notice.

2. Any such notice of hearing may be withdrawn or amended prior to the beginning of the hearing by the board.

c. Conduct of hearings

1. It shall be the duty of the board or its agent to inquire fully into all matters at issue and to obtain a full and complete record.

2. The board may, at its discretion, continue the hearing from day to day or adjourn it to a later date or another place by announcement thereof at the hearing or by other appropriate notice.

3. Motions:

(a) All motions made during a hearing shall be made part of the record of the proceedings.

(b) All motions and answers thereto other than those made during a hearing shall be made in writing to the board, pursuant to the provisions of K.S.A. 44-829(a), shall briefly state the relief sought, and shall be accompanied by affidavits set-

ting forth the grounds upon which they are based. Answering affidavits, if any, shall be filed with the board within five working days after service of the motion, unless the board or its agent directs otherwise. The board or its agent shall rule upon motions filed with it. It may hear oral argument or testimony thereon, in which case it shall notify the parties of the time and place of such argument or for the taking of such testimony. The board shall issue rulings and orders to decide all matters in hearings before it and all such motions and rulings and orders thereon shall be part of the record of the proceedings.

4. An objection not duly made before the board shall be deemed waived unless the failure to make such objection shall be excused by the board or its agent because of extraordinary circumstances.

5. Introduction of evidence; rights of parties at hearings:

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the board or its agent shall have the power to call and examine witnesses, and to introduce into the record documentary and other evidence. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties, unless excused by the board or its agent. Witnesses shall be examined orally under oath. Compliance with the technical rules of evidence shall not be required for any hearing other than a hearing conducted pursuant to K.S.A. 44-829. Stipulations of fact may be introduced into evidence with respect to any issue.

(b) The refusal of a witness at any hearing to answer any question which has been ruled proper by the hearing officer shall be noted in the record. Such refusal shall go to the weight of previous testimony, but shall not be grounds for striking previous testimony of the particular witness.

(c) Misconduct at any hearing before the board shall be grounds for exclusion from the hearing. As used herein, "misconduct" shall mean conduct which disrupts or interferes with the orderly administration of proceedings under the act, or conduct which evinces a refusal to obey or disregard a lawful order or ruling of the hearing officer.

6. Upon appointment by the board of an agent to perform any of its functions, the parties shall file within three days any objection to said appointment. The objection shall contain a statement setting forth the reasons for the party's po-

sition. Such objection shall be confined to the person appointed, not the appointment in and of itself.

7. Findings of fact; conclusions of law; recommendations:

(a) As expeditiously as possible after the conclusion of the hearing, the hearing officer shall issue his or her findings of fact, conclusions of law, and recommendations to the board. Such findings of fact, conclusions of law, and recommendations shall be in writing and shall contain, but need not be limited to: (1) A statement of the case and preliminary procedures before the board or the hearing officer, (2) findings of fact, (3) conclusions of law and recommendations to the board. The board shall convene in open meeting to consider the case no later than thirty days after such date as the hearing examiner has made his or her recommendations available. (Authorized by K.S.A. 44-823(c), 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-3. Intervention. Any third party having a legitimate interest in any proceedings may file a petition of intervention setting forth facts sufficient to establish such interest and requesting that the board resolve contested factual matters in its favor. Any organization which has a signed, valid memorandum of agreement encompassing the proposed unit or any portion thereof shall be considered to have a legitimate interest in any proceedings upon presentation of same. (Authorized by K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-4. Authorization cards; acceptability. Evidence of representation or legitimate interest may be either by individual authorization cards or by petition. In either case, the petition or card shall show the address and social security number of, and be signed and dated by, the employee expressing an intent to be represented by a specific employee organization. A card or petition signed and dated by an agricultural employee less than one-hundred eighty days prior to the date on which the petition was filed shall constitute prima facie evidence of continuation of such authorization. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-5. Validity of showing of interest. a. The proof of interest submitted shall not be furnished to any of the parties. The board shall de-

termine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before the board. Proof of interest shall not be required until after unit determination has been made by the board.

b. All agricultural employers shall be required to furnish the board with an alphabetical listing of all employees within the appropriate unit as expeditiously as possible, not to exceed thirty days after the filing of a petition for a certification election following unit determination, unless otherwise directed by the board or its agent. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-6. Units. a. Determining appropriate unit

1. Any unit may consist of all of the employees of the agricultural employer, or any department, division, section or area, or party or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules.

2. In considering whether a unit is appropriate, the board shall consider the provisions of K.S.A. 44-823(e) and whether the proposed unit of the agricultural employees is a distinct and homogeneous group, with significant problems which can be adjusted without regard to the other agricultural employees of the agricultural employer. It may also consider the relationship of the proposed unit to the total organizational pattern of the agricultural employer. Neither the extent to which agricultural employees have been organized by an employee organization nor the desires of a particular group of agricultural employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate. (Authorized by K.S.A. 44-823(e), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-7. Petition for unit determination, unit clarification and investigation or certification of employee organization. a. Petition; filing—A petition may be filed with the board by an employee organization or group of agricultural employees or agricultural employer. The petition form shall be provided by the board. The original petition shall be signed by the petitioner or his or her authorized representative and the original and three copies thereof shall be filed with the board. (Authorized by K.S.A. 44-823(c); effective May 1, 1978.)

12-2-8. Procedure following filing of petitions.

a. Petition; amendment or withdrawal—Any petition may be amended, in whole or in part, or withdrawn by the petitioner at any time prior to the filing of an answer by any interested party. A petition may be amended or withdrawn by the petitioner after the filing of an answer by any party or after the board has acted thereon, only with the approval of the board and upon such conditions as the board may deem proper and just.

b. Answers—Each party shall file an answer to the petition within seven days after receipt thereof. The board may extend the time for filing an answer upon showing of good cause. Failure to answer within seven days shall be deemed as an admission by said party to all allegations in the petition.

c. Investigation—Subsequent to the filing of a petition, the board shall direct an investigation of all questions concerning representation, including, if applicable, whether the proof of interest requirement, as set forth in the above rules, has been met, whether more than one employee organization seeks to represent some or all of the employees in the allegedly appropriate unit, and whether there is agreement among the parties as to the appropriateness of the alleged unit.

d. Hearings—The board may conduct a hearing, pursuant to K.S.A. 44-823(c), in which event it or its agent shall prepare and cause to be served upon the parties a notice of hearing before the board or its agent at a time and place fixed therein. A copy of the petition shall be served within the notice of hearing. (Authorized by K.S.A. 44-823, K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-9. Elections—eligibility and conditions.

a. General Provisions

1. If the board, upon petition of an employee organization, determines that an employee organization has made a valid showing of interest, it shall order that an election be conducted by such person or persons as may be designated by the board.

2. All elections shall be held not later than thirty days from date of validation of the first submitted proof of interest or such other date as the board or its agent may specify, at such times and places and upon such terms or conditions as the board or its agent may specify.

3. The employees eligible to vote shall be those on the payroll on the date of the validation of

proof of interest and who remain on the payroll on the date of the election.

4. Upon validation of proof of interest the board shall immediately furnish a list of names and addresses of all eligible employees in the appropriate unit to all employee organizations submitting proof of interest.

5. A motion for intervention for purpose of representation on an election ballot at a certification election shall not be entertained during the ten days immediately preceding said election.

6. At least seven days prior to the election, the board shall cause a notice of election and sample ballot to be posted in conspicuous areas where employees in the affected unit assemble. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-10. Elections—procedure.

a. General Provisions

1. All elections shall be by secret ballot, at times and places and in such manner as the board or its agent may direct. Elections shall be conducted by a designated agent of the board, whose determination of all questions arising shall be final, subject only to review by the board.

2. Ballots shall be prepared and issued by the board. Ballots shall contain the name of each representative and a choice of “no representative.” The place of priority on the ballot shall be determined by the chronological filing or appearance on the dockets of the board with the petitioner taking first priority. In a run-off election, the place of priority shall be determined by the sequence appearing on the ballot at the prior inclusive election.

3. Each party to the election shall be entitled to be represented by an equal number of observers watching at each polling place. Observers shall be employees eligible to vote, or in the case of employer’s observers, shall be non-supervisory personnel, unless otherwise agreed to by all parties or other appropriate persons.

4. Prior to the commencement of the election, the agent of the board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

5. Any prospective voter may be challenged for cause.

6. All employees whose names do not appear upon the list certified by the board as being a com-

plete list of the employees within the defined appropriate unit shall be challenged by the agent of the board.

7. A challenged voter shall be permitted to vote, but the voter's ballot shall not be cast. It shall, instead, be sealed in a separate, unmarked envelope under the supervision of the agent of the board and inserted in a special identifiable form envelope provided by the board for that purpose and returned to the election agent. All questions of challenged ballots shall be resolved by the election agent prior to counting the ballots.

8. In all elections a majority of the valid votes cast shall determine the employee representative designated by the employees in the defined appropriate unit, or the determination of no representative shall be designated. A tally of ballots shall be made by the board agent immediately following the closing of the polls, except in the case of an unresolved challenged ballot, and a tally sheet shall be furnished to all parties to the election.

9. Each party to the election shall be permitted to observe the count of the ballots.

10. All objections to a party's conduct or third person's conduct to the election shall be, by a charge of prohibiting practice, filed with the board within five days of the holding of the election and the board shall immediately issue such order as to effectuate the purposes of the act.

11. All objections of the board's conduct of an election shall be filed within five days of the holding of the same and the board shall immediately issue such order as required to effectuate the purposes of the act.

12. The board shall conduct a run-off election when an election in which the ballot provides for not less than three choices (*i.e.* at least two representatives and no representation) results in no choice receiving a majority of the valid ballots cast.

13. The ballot in the run-off election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

14. The board shall conduct run-off elections as expeditiously as possible not to exceed thirty days following the first election unless otherwise ordered by the board or its agent. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-11. Certification of election results. a. Certification—If no objections are filed

within the time set forth above, and if no run-off election is to be held, the board or its agent shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate. All employee organizations shall be certified as of the last day of the election. (Authorized by K.S.A. 44-823(d), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-12. Impasse resolution. a. Petition filing—In the event a recognized employee organization or an agricultural employer believes an impasse in negotiations exists, such recognized employee organization or agricultural employer may file a request for assistance at impasse with the board.

1. Such request shall be in writing and shall show whether a joint party or single party request is being made.

2. Such request shall also show the names and addresses of the parties to the dispute.

b. The board, upon receipt of such request, shall, as expeditiously as possible, investigate and rule whether an impasse exists or whether the parties shall continue to meet.

c. In the event the board declares that an impasse exists, the board shall appoint a mediator from a list of qualified persons maintained by the board.

d. If the impasse exists seven days after the mediator first meets with the parties, or upon notice to the board by the mediator that the impasse still exists, the board shall appoint a fact finder or panel of fact finders.

1. The board shall ascertain from the parties their preference for an individual fact finder or a panel of fact finders. In the event the parties to the dispute cannot agree upon the number of fact finders to be utilized, the board shall appoint such person or persons as it shall deem necessary to effectuate the provisions of the act.

2. The fact finder or panel of fact finders shall submit to the parties and the board the fact-finding report no later than twenty-one days from the date of the fact-finding hearing.

e. If the parties have not resolved the impasse by the end of a forty-day period commencing with the submission of the report of the fact-finding board, the agricultural labor relations board shall forthwith schedule an arbitration hearing.

1. The board shall grant the parties a five-day period in which to select a neutral arbitrator. In

the event the parties cannot within the five-day period agree on a neutral arbitrator, the board may appoint such person or persons as it deems necessary, or the board may choose to hear the matter.

2. Any person or persons selected by the parties or appointed by the board to serve as a neutral arbitrator or the agricultural labor relations board, serving as an arbitration board, shall issue findings and the award no later than five days from the close of the arbitration hearing. In the event the arbitration hearing is conducted by a person or persons selected by the parties or appointed by the board, the board shall issue its order upon receipt of the arbitration award. (Authorized by K.S.A. 44-826, K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-13. Complaints. a. Who may file—A complaint that any agricultural employee, employee organization or agricultural employer has engaged in or is engaging in any prohibited practice under the act may be filed by an agricultural employee, a group of agricultural employees, an employee organization or an agricultural employer, any of whom may hereafter be referred to as the party filing the complaint.

b. Form and filing—Complaint forms shall be provided by the board. An original and three copies of the complaint shall be filed with the board. (Authorized by K.S.A. 44-829(a).)

c. Answer to complaint—contents—The answer shall contain the following: (1) A specific admission, denial, or explanation of each allegation of the complaint, or if the filing party is without knowledge thereof, he shall so state, such statement operating as a denial. Admissions or denials may be made to all or part of an allegation but shall fairly meet the substance of the allegation; (2) A specific detailed statement of any affirmative defense; (3) A clear and concise statement of the facts and matters of law relied upon. Any allegation in the complaint not specifically denied in the answer, unless the respondent shall state in the answer that the respondent is without knowledge, and the reasons he or she is without knowledge, shall be deemed admitted to be true and may be so found by the board.

d. Answer to complaint—time for filing

1. The party named in the complaint shall file a written answer within seven days after service of the complaint.

e. Amendment to complaint—Any complaint

may be amended, in whole or in part, by the complainant at any time prior to the filing of an answer by the respondent. A complaint may be amended by the complainant with approval of the board or its agent after an answer has been filed by the respondent at any time before the board's final decision or order.

f. Amendment of answer; following amendment of complaint—In any case where a complaint has been amended, the respondent shall have an opportunity to amend his answer within such period as may be fixed by the board.

g. Withdrawal of complaint—Through written notice served on the board, a complaint or any part thereof may be withdrawn at any time. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-14. Hearing notice. After a complaint has been filed, if it appears to the board or its agent that formal proceedings in respect thereto should be instituted, the board, or any member thereof, or its agent shall serve on each party a notice of hearing. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-15. Record of proceedings before the board; prohibited practice cases. a. General provisions. 1. The record of the proceedings before the board in prohibited practice cases shall consist of the complaint or amended complaint, any other pleadings, notices of hearings, motions, orders, stenographic report, exhibits, depositions, findings of fact, conclusions of law, decisions and order.

2. If a prohibited practice proceeding is predicated in whole or in part upon a prior representation proceeding, the record of such prior representation proceeding shall be deemed a part of the record for all purposes in the prohibited practice proceeding. (Authorized by K.S.A. 44-823(c), 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-16. Joinder of parties. All persons alleged to have engaged in any unfair practices may be joined as parties, whether jointly, severally, or in the alternative, and a decision may be rendered against one or more of them upon all of the evidence, without regard to the party by or against whom such evidence has been introduced. No proceedings shall be dismissed because of non-joinder or misjoinder of parties. Upon motion of

any party or upon motion of the board or its hearing examiner, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as may be deemed just and proper. Such motions shall be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move shall be deemed a waiver of all objections to a nonjoinder or misjoinder. (Authorized by K.S.A. 44-

829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)

12-2-17. Strikes or lockout. In the case of an alleged violation of K.S.A. 44-820(d) or K.S.A. 44-829(a), the board or its agent may handle the case as expeditiously as possible by waiving normal time limitations. (Authorized by K.S.A. 44-829(a), K.S.A. 1977 Supp. 44-820(d); effective May 1, 1978.)